

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Echo Brown	Team: Team # 7	CCRB Case #: 200608014	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/18/2006	Location of Incident: The corner of East 223rd Street and White Plains Road	Precinct: 47	18 Mo. SOL 12/18/2007	EO SOL 12/18/2007	
Date/Time CV Reported Sun, 06/18/2006 1:26 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 06/18/2006 1:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Donald Abrams	00085	921890	047 PCT
2. POM Michael Mccready	01037	924163	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Abraham Villavizar	08178	934245	047 PCT
2. POM Levar Stockton	05791	934206	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Donald Abrams	Abuse: Sgt. Donald Abrams authorized the stop and question of § 87(2)(b)	
B.POM Michael Mccready	Abuse: PO Michael McCready refused to provide his name and shield number to § 87(2)(b)	
C.SGT Donald Abrams	Abuse: Sgt. Donald Abrams authorized the frisk of § 87(2)(b)	
D.SGT Donald Abrams	Abuse: Sgt. Abrams authorized the search of the vehicle in which § 87(2)(b) was an occupant.	
E.POM Michael Mccready	Abuse: PO Michael McCready damaged § 87(2)(b) s property.	

Synopsis

At approximately midnight on June 18, 2006, § 87(2)(b) was sitting in his parked vehicle on East 223rd Street and White Plains Road in the Bronx about to pick up his cousin's mail when Sgt. Donald Abrams, PO Michael McCready, and PO Levar Stockton approached him (**Allegation A**) and asked to see his driver's license. § 87(2)(b) asked PO McCready, the officer with whom he primarily interacted, for his name and badge number, which PO McCready refused (**Allegation B**). The three officers then asked § 87(2)(b) to step out of his vehicle and PO McCready frisked him (**Allegation C**). PO McCready, Sgt. Abrams and PO Stockton then searched § 87(2)(b)'s vehicle (**Allegation D**). While searching § 87(2)(b)'s vehicle, PO McCready damaged § 87(2)(b)'s console by lifting it up (**Allegation E**).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Summary of Complaint

§ 87(2)(b) who is a § 87(2)(b) made two statements regarding this incident. In addition to his original CCRB complaint [encl. 4A-B], § 87(2)(b) also provided a verbal statement during his CCRB interview on July 5, 2006 [encl. 5A-D]. Both statements were consistent.

On June 18, 2006 around midnight § 87(2)(b) was looking for a parking spot on East 223rd Street, in the vicinity of White Plains Road. § 87(2)(b) was wearing jeans and a t-shirt. Driving a black 1996 Nissan Maxima, § 87(2)(b) left a party on 229th Street between Barnes Ave. and Bronxwood Ave. before driving to 223rd Street. § 87(2)(b)'s cousin, who resides on 223rd Street, was on vacation in South Carolina and § 87(2)(b) was going to pick up his cousin's mail. Shortly after pulling into a parking spot that he found about 10 feet away from his cousin's house, § 87(2)(b) attempted to call his cousin to inform him that he was about to pick up his mail. About three to five minutes after § 87(2)(b) had been sitting in his parked car attempting to call his cousin, a black Impala drove toward § 87(2)(b). § 87(2)(b) said that 223rd Street is a residential one-way street and that the black Impala was driving toward him in the wrong direction. § 87(2)(b) was parked in the direction of which traffic flows on 223rd Street.

The black Impala pulled up on the side of § 87(2)(b)'s car and Sgt. Donald Abrams, PO Michael McCready and PO Levar Stockton exited the vehicle. All three officers were identified by the investigation. PO McCready, who stood near the driver's side window, asked § 87(2)(b) what he was doing on 223rd Street. § 87(2)(b) asked PO McCready, "Who are you?" § 87(2)(b) did not recall if he determined that PO McCready was a police officer from PO McCready flashing his badge or telling § 87(2)(b) he was police officer. After § 87(2)(b) found out PO McCready was a police officer, he asked for PO McCready's name and badge number. PO McCready replied, "You don't want a problem. You don't want to make this out into a bigger problem than it already is."

PO McCready then asked § 87(2)(b) for his driver's license and vehicle registration. § 87(2)(b) removed his wallet from the back right pocket of his pants and began to look for his driver's license and registration. After § 87(2)(b) had been looking through his wallet for an unspecified amount of time, PO McCready pointed to § 87(2)(b)'s driver's license, which was visible in the left pocket of his wallet, and said, "What's that?" § 87(2)(b) said, "That's my license, but you asked for everything and I want to give you everything at once." PO McCready said, "Don't worry about the registration, let me just see your license." § 87(2)(b) gave PO McCready his license.

PO McCready, accompanied by Sgt. Abrams and PO Stockton, took § 87(2)(b)'s license back to their vehicle and brought it back to § 87(2)(b) after a few minutes. PO McCready then asked § 87(2)(b) again what he was doing on 223rd Street. § 87(2)(b) replied that his cousin lives on the street and he was coming to pick up his mail. § 87(2)(b) then asked PO McCready why he asked for his identification. PO McCready then asked § 87(2)(b) to step out of the car. PO McCready then frisked § 87(2)(b) by patting § 87(2)(b)'s pockets while § 87(2)(b) leaned against the side of his car.

Shortly after § 87(2)(b) was frisked, a foot post officer, PO Abraham Villavizar arrived on scene and escorted § 87(2)(b) to the back of his vehicle after briefly talking to the four officers in plain clothes. § 87(2)(b) identified PO Villavizar to the CCRB by name and shield number. After being escorted to the back of his vehicle, § 87(2)(b) asked PO Villavizar for his badge number and PO Villavizar held his badge out for § 87(2)(b) to see. The three officers in plain clothes searched § 87(2)(b)'s car while PO Villavizar stood next to § 87(2)(b) at the rear of his vehicle.

PO McCready and Sgt. Abrams searched under the front seats of § 87(2)(b)'s car. PO McCready looked under the driver's side seat. § 87(2)(b) believes PO McCready tore the console of his car by lifting the covering around the stick shift, which is attached to the console. § 87(2)(b) could not see exactly what the three officers were doing because he was standing behind the car near the trunk and it was dark outside, but he said that he saw PO McCready searching the area around his console.

Sgt. Abrams, PO McCready and PO Stockton then told § 87(2)(b) to get back into his vehicle and then they searched § 87(2)(b)'s trunk. § 87(2)(b) stated that he had telecommunications tools, which he uses for his job, in a closed book bag in the back of his trunk. The three officers removed the bag from the trunk and looked through it. PO McCready asked § 87(2)(b) if he had anything that looked like a gun in his bag. § 87(2)(b) replied, "You were just in the bag, does anything in there look like a gun?" After putting the book bag full of tools back into § 87(2)(b)'s trunk, Sgt. Abrams and the officers under his command told § 87(2)(b) that they searched his car because they got a call that he had a gun. § 87(2)(b) said, "You could have told me that from the beginning." § 87(2)(b) again asked PO McCready for his badge number, which he refused to provide.

Sgt. Abrams and the officers under his command, and PO Villavizar left at the same time, but not together. After the officers left, an unspecified number of people approached § 87(2)(b) and began to talk to him about the incident. The people had been watching the incident from a stoop outside of a house across the street from § 87(2)(b)'s car.

Results of Investigation

Additional Witnesses

Both § 87(2)(b) and PO Villavizar stated that there were people watching the incident from a stoop outside of a house near § 87(2)(b)'s car. Neither § 87(2)(b) nor PO Villavizar could identify the people or the exact location where they were sitting. As a result, the unidentified people could not be contacted. Furthermore, additional witness statements would not have altered the recommended dispositions.

Identification of Officers Interviewed

PO Abraham Villavizar was identified by name and shield number during § 87(2)(b)'s original CCRB statement. PO Michael McCready was identified by the stop and frisk report. During his interview at the CCRB, PO McCready identified PO Levar Stockton and Sergeant Donald Abrams as his partners during the incident.

PO Michael McCready

PO McCready is a § 87(2)(b). He was appointed to the force in July of 1999 [encl. 2].

Memo Book [encl. 9A-B]

0047: UF 250 x 1/ 223+WPR RE: CPW-Radio Run

UF- 250 Stop and Frisk Report [encl. 10]

According to the Stop and Frisk Report filled out by PO McCready, § 87(2)(b) was stopped and frisked because he "fit the description" [of the individual with a gun] and he made "furtive movements."

The report also indicates that the time of day and § 87(2)(b)'s proximity to the crime scene were additional factors leading to him being stopped and frisked.

CCRB Testimony [encl. 11A-B]

PO McCready was interviewed at the CCRB on August 4, 2006. On June 18, 2006, PO McCready worked in the 47th Precinct's anti-crime unit with Sergeant Donald Abrams and PO Levar Stockton from 5:30pm on June 17, 2006 until 3:05am on June 18, 2006.

At approximately midnight, PO McCready received a radio run for a man wearing a gray hooded sweatshirt with a gun at the corner of 223rd and White Plains Road. PO McCready did not recall the radio run mentioning the suspect's name.

PO McCready and his partners were four or five blocks away from 223rd Street when they received the run. When PO McCready and his partners reached the location, they observed § 87(2)(b) in a vehicle outside the location. § 87(2)(b) leaned forward and down toward the passenger side and then turned around and leaned over towards the back seat of the vehicle. After watching § 87(2)(b) for approximately 30 seconds, PO McCready approached the driver's side window of § 87(2)(b)'s vehicle and saw a gray hooded sweatshirt on the back seat. PO McCready believed that § 87(2)(b) had removed the hooded sweatshirt and put it on the back seat of his vehicle. After noticing the gray hooded sweatshirt, PO McCready asked § 87(2)(b) to step out of his vehicle and frisked him. PO McCready stated that he frisked § 87(2)(b) because he saw a gray hooded sweatshirt in his vehicle. After § 87(2)(b) was frisked, one or both of PO McCready's partners walked him to the rear of his vehicle.

PO McCready then searched the passenger side seat and floor, the back seat and around the console of § 87(2)(b)'s vehicle, places where he observed suspicious behavior before approaching § 87(2)(b). The console of § 87(2)(b)'s vehicle was dislodged due to the installation speakers that did not originally come in the car. Specifically, the plate that goes around the shift lever was dislodged. PO McCready used his flashlight to search around the area and also lifted the console up more than it already was, but did not damage the console further. After searching § 87(2)(b)'s vehicle for about two minutes, § 87(2)(b) got back into the driver's seat of the vehicle. PO McCready then searched the trunk by looking inside of it. PO McCready saw a lot of electrical repair equipment strewn around the trunk. PO McCready did not recall if his partners also searched § 87(2)(b)'s vehicle. PO McCready also stated § 87(2)(b)'s vehicle was "a mess" and that the vehicle was in "poor condition."

PO McCready did not recall at what point he or his partners asked for § 87(2)(b)'s driver's license and registration. PO McCready did not recall if § 87(2)(b) ever asked him or his partners for their name and shield numbers. PO McCready also did not recall seeing other civilians in the area during the incident.

No contraband was found as a result of the frisk or the search of § 87(2)(b)'s vehicle. The radio run was unfounded after § 87(2)(b) was frisked and his vehicle was searched. PO McCready filled out a UF-250 Stop and Frisk report after the incident.

Sergeant Donald Abrams

Sgt. Abrams is a § 87(2)(b). He was appointed to the force in August of 1998 [encl. 1A-B].

Memo Book

Sgt. Abrams did not have any relevant memo book entries regarding this incident.

CCRB Testimony [encl. 6A-B]

Sgt. Abrams was interviewed at the CCRB on August 16, 2006. On June 18, 2006, Sgt. Abrams worked as the 47th Precinct's anti-crime supervisor with PO Levar Stockton and PO Michael McCready from 5:26pm on June 17, 2006 until 2:10am on June 18, 2006.

At approximately midnight, Sgt. Abrams and his partners received a radio run for a black man with a firearm, wearing a gray sweatshirt in front of a location on 223rd Street. Sgt. Abrams did not recall if the radio run mentioned the name of the suspect or if a vehicle was mentioned.

Sgt. Abrams did not recall where he and his partners were before the run or how long it took them to arrive at 223rd Street. After arriving on 223rd Street, Sgt. Abrams and his partners observed § 87(2)(b) for approximately one minute, sitting in a vehicle in front of the exact location transmitted

over the radio run. § 87(2)(b) was not making any movements. There were also two males, one black and one Hispanic, sitting in front of the house next to § 87(2)(b)'s vehicle. Initially, Sgt. Abrams stated that neither § 87(2)(b) nor Sgt. Abrams and his partners ever interacted with the two males sitting on the stoop. Later during the interview, Sgt. Abrams stated that he "definitely would have talked to them" because they were in front of the location mentioned in the radio run, but he did not recall exactly what he said to them.

After parking their car in front of § 87(2)(b)'s vehicle, Sgt. Abrams and his partners exited their vehicle and approached the driver's side of § 87(2)(b)'s vehicle. Sgt. Abrams stated that § 87(2)(b)'s vehicle was not in good condition and that there were unidentified items strewn about on the vehicle. Despite the condition of § 87(2)(b)'s vehicle, Sgt. Abrams saw a gray sweatshirt in § 87(2)(b)'s vehicle. Sgt. Abrams did not recall where in the vehicle he noticed the gray sweatshirt.

PO McCready primarily spoke to § 87(2)(b) but Sgt. Abrams did not recall what PO McCready and § 87(2)(b) discussed. PO McCready requested § 87(2)(b)'s driver's license and registration, but Sgt. Abrams did not recall if § 87(2)(b)'s license and registration were checked for warrants. Sgt. Abrams did not recall interacting with § 87(2)(b) during the incident. Sgt. Abrams described the § 87(2)(b)'s demeanor as "calm."

§ 87(2)(b) then got out of his vehicle and was frisked by PO McCready. Sgt. Abrams was standing near the rear of § 87(2)(b)'s vehicle monitoring the area around the vehicle while § 87(2)(b) was being frisked. After frisking § 87(2)(b) PO McCready leaned into the driver's side of § 87(2)(b)'s vehicle and looked around. PO McCready also looked in the trunk of § 87(2)(b)'s vehicle. Sgt. Abrams remained toward the rear of § 87(2)(b)'s vehicle throughout the search and never searched § 87(2)(b)'s vehicle or trunk. Sgt. Abrams did not recall how long the search lasted, but he stated that it "wasn't long at all."

Sgt. Abrams also stated that there was a foot post officer, PO Villavizar, observing the incident. Sgt. Abrams did not recall if PO Villavizar ever interacted with § 87(2)(b).

Sgt. Abrams did not recall if § 87(2)(b) asked him and his partners for their names and badge numbers.

PO Levar Stockton

PO Stockton is a § 87(2)(b). He was appointed to the force in Jan of 2004.

Memo Book [encl. 7A-B]

0045: 10-10 Gun Run E. 223 W.P.R

0055: 93Q 250x1 PO McCready

CCRB Statement [encl. 8A-B]

PO Stockton was interviewed at the CCRB on August 15, 2006. On June 18, 2006 PO Stockton worked in the 47th Precinct's anti-crime unit with Sgt. Donald Abrams and PO Michael McCready from 5:30pm on June 17, 2006 until 2:05am on June 18, 2006.

At approximately 12:45am, PO Stockton and his partners received a radio run for a man with a gun sitting in a vehicle on 223rd Street. PO Stockton did not recall if a name was given during the 911 call, but he stated that if a name were mentioned, he would have documented it in his memo book. PO Stockton did not recall where he and his partners were before receiving the radio run or how long it took them to arrive at 223rd Street.

After arriving at 223rd Street, PO Stockton and his partners noticed § 87(2)(b) who fit the description transmitted over the radio, sitting in a parked vehicle. § 87(2)(b)'s vehicle was facing eastbound toward White Plains Road on the corner of 223rd Street. § 87(2)(b) who was facing forward, was moving his shoulders from left to right and it appeared as if he was fidgeting with something in his lap.

There was a foot post officer on the scene when PO Stockton and his partners arrived, but PO Stockton did not recall the identity of the foot post officer or what he was doing when they arrived. Neither PO Stockton nor his partners said anything to the foot post officer throughout the incident.

PO Stockton parked his vehicle, which was facing westbound on 223rd Street, in front of § 87(2)(b)'s vehicle. Sgt. Abrams and PO McCready approached § 87(2)(b) but PO Stockton did not recall what they did as they approached him. PO Stockton's responsibility was to watch the outer

perimeter of the area to ensure the safety of his partners as they approached and interacted with § 87(2)(b)

At one point during the incident, § 87(2)(b) got out of his vehicle, but PO Stockton did not recall why or when § 87(2)(b) got out of his vehicle. PO McCready frisked § 87(2)(b) at some point after he got out of the vehicle, but PO Stockton did not recall when § 87(2)(b) was frisked. PO Stockton saw his partners talking to § 87(2)(b) but he did not recall hearing what was being said and did not notice anything out of the ordinary. PO Stockton was talking to other uniformed police officers on the scene while § 87(2)(b) was outside of his vehicle, but he not recall what they talked about. At one point, PO Stockton's partners walked around § 87(2)(b)'s vehicle, but he did not recall if it was Sgt. Abrams or PO McCready. PO Stockton also did not recall what the officer did after walking around § 87(2)(b)'s vehicle. PO Stockton did not recall if his partners looked inside or searched § 87(2)(b)'s vehicle. PO Stockton never looked inside of § 87(2)(b)'s vehicle.

§ 87(2)(b) did not ask PO Stockton for his name and badge number, and PO Stockton did not recall if § 87(2)(b) asked his partners for their name and badge numbers. PO Stockton did not recall if § 87(2)(b) said anything about a damaged console during the incident. PO Stockton also did not recall if his partners ever asked for § 87(2)(b)'s license and registration.

After talking with § 87(2)(b) PO Stockton, Sgt. Abrams and PO McCready returned to their vehicle. PO Stockton did not recall how long the incident lasted.

PO Abraham Villavizar

PO Villavizar is a § 87(2)(b). He was appointed to the force in Jan 2004.

Memo Book [encl. 12A-C]

0045: 10-10 M w/F/A @ F/O 685 E. 223/225

CCRB Statement [encl. 13A-B]

PO Villavizar was interviewed at the CCRB on July 20, 2006. On June 18, 2006, PO Villavizar worked as a foot post officer in sector A of the 47th Precinct from 5:30pm on June 17, 2006 until 2:05am on June 18, 2006.

At approximately 12:45 am, PO Villavizar responded to a call for a man with a gun at 685 East 223rd Street. PO Villavizar was on East 226th Street at the time of the call and he walked 3 blocks to East 223rd Street. As PO Villavizar approached 223rd Street, he saw § 87(2)(b) standing at the back of his vehicle, while an unspecified number of anti-crime officers were searching his vehicle. § 87(2)(b)'s car was legally parked in the eastbound direction on 223rd Street. PO Villavizar went and stood next to § 87(2)(b) at the rear of § 87(2)(b)'s vehicle without speaking to the anti-crime officers or § 87(2)(b). PO Villavizar indicated that he could tell § 87(2)(b) was upset because of § 87(2)(b)'s facial expressions.

From the rear of the vehicle, PO Villavizar could see the anti-crime officers using their flashlights to search for a gun on and under the front seats of § 87(2)(b)'s car. Only the front two doors of § 87(2)(b)'s car were open. After the anti-crime officers finished searching for a gun, they left the scene without incident. As PO Villavizar was leaving, § 87(2)(b) asked him for his name and shield number to which PO Villavizar responded, "Why do you need it?" § 87(2)(b) said, "Cause you are the only police officer in uniform here. I know you're an officer. Those other guys aren't in uniform. They could be anybody. I'm going to make a complaint." PO Villavizar provided his name and shield number and left the scene.

NYPD Documents

SPRINT [encl. 14] / *Communications CD*

A SPRINT (N00442) was generated in response to a call placed to 911 at 12:33am on June 18, 2006. The caller, § 87(2)(b) reported that § 87(2)(b) wearing a gray hooded sweatshirt, threatened to shoot her. § 87(2)(b) who lives at § 87(2)(b), said she saw § 87(2)(b) with a gun outside of her apartment building before he ran down the street toward 223rd Street and White Plains Road. The call was unfounded at 12:47am. Another SPRINT (N00992) was generated in

response to a second call that § 87(2)(b) placed to 911 at 1:11 am. § 87(2)(b) reported that § 87(2)(b) was on § 87(2)(b) with another male who was wearing a white T-shirt.

Roll Call [encl. 16A-D]

The 47th Precinct roll call lists Sgt. Abrams, PO Stockton, and PO McCready as the officers assigned to the anti-crime unit. PO Villavizar is listed as a foot post officer assigned to sector A.

§ 87(2)(b)
§ 87(2)(b)

Civilian CCRB History [encl. 3]

§ 87(2)(b) does not have a CCRB complaint history.

Police Officer CCRB History

The Board substantiated a discourtesy allegation against Sgt. Abrams in 2003 (case # 200301285). A DCT trial found Sgt. Abrams not guilty in May of 2006. The Board substantiated a vehicle search allegation against PO McCready in 2006 (case # 200600389). The Board recommended charges against PO McCready. The NYPD has not yet submitted a disposition for the substantiated vehicle search allegation against PO McCready.

Conclusions and Recommendations

Identification of Subject Officers

§ 87(2)(b) stated that there were three or four white male officers in plain clothes. This investigation determined that there were three male officers in plain clothes, two were white and one was a light-skinned black officer. The stop and frisk of § 87(2)(b) are being pleaded against Sgt. Abrams because he was the supervising officer during the incident. § 87(2)(b) also alleged that the officer who he was primarily talking to and who asked for his license and registration refused to provide his name and shield number. This allegation is being pleaded against PO McCready because he was the first officer to approach § 87(2)(b) and the officer with whom he primarily interacted. The search of § 87(2)(b)'s vehicle is being pleaded against Sgt. Abrams because he was the supervising officer during the incident. Finally, § 87(2)(b) alleged that one of the officers damaged his console. Since PO McCready admitted to searching the area around § 87(2)(b)'s console, this allegation is being pleaded against PO McCready.

Undisputed Facts

It is not disputed that § 87(2)(b) was in the location specified during the 911 call. It is not disputed that § 87(2)(b) was frisked and his vehicle was searched. It is also not disputed that no contraband was found as a result of the stop and frisk of § 87(2)(b) and the search of his vehicle.

Disputed Facts

Whether PO McCready refused to provide his name and shield number is disputed. Also in dispute is whether PO McCready damaged § 87(2)(b)'s console. Which officers, in addition to PO McCready, searched § 87(2)(b)'s vehicle is also in dispute.

§ 87(2)(b), § 87(2)(c)
§ 87(2)(b)
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§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: Sgt. Donald Abrams authorized the stop of § 87(2)(b)

Sgt. Abrams and the officers under his command stopped § 87(2)(b) because he allegedly made furtive movements and was sitting in a parked vehicle outside of the location mentioned by the 911 caller.

According to Kamins' *Search and Seizure Law* [encl. B-E], "in order to approach a stationary vehicle, the police must have an articulable basis for requesting information that is based upon an objective credible reason not necessarily indicative of criminality...The officer is permitted to ask questions concerning the driver's identity, address, and destination, and can require the driver to produce identification."

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation B: PO Michael McCready refused to provide his name and shield number to § 87(2)(b)

This investigation determined that § 87(2)(b) asked PO McCready for his name and badge number because he was the officer with whom § 87(2)(b) primarily interacted. § 87(2)(b) stated that PO McCready identified himself as a police officer, but when § 87(2)(b) asked PO McCready for his name and badge number, PO McCready told § 87(2)(b) that "he didn't want to make the situation into a bigger problem than it already was." § 87(2)(b) asked PO McCready for his name and badge number again at the conclusion of the incident and PO McCready again refused to provide this information. Patrol Guide procedure 203-09 [encl. I] states that an officer must provide his or her "rank, name, shield number and command to anyone who requests such information."

PO McCready, Sgt. Abrams and PO Stockton were all dressed in plain clothes when they approached § 87(2)(b). This fact increases the likelihood that § 87(2)(b) asked for further identification from PO McCready.

§ 87(2)(b) also stated that he asked PO McCready, Sgt. Abrams and PO Stockton several times if they had to file an incident report in relation to him being stopped, frisked, and his vehicle searched. § 87(2)(b) stated that he asked the officers this because he felt like his rights had been violated and he wanted a copy of the report and he also intended to file a complaint. The fact that § 87(2)(b) repeatedly asked the officers if they had to file an incident report suggests that he wanted to identify the officers and ensure that their actions, which he believed were unwarranted and unjustified, were documented.

§ 87(2)(b) also asked PO Villavizar for his name and badge number, and according to PO Villavizar and § 87(2)(b) told PO Villavizar that he was going to file a complaint while writing down PO Villavizar's badge number. § 87(2)(b) filed a complaint less than an hour after the incident.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C: Sgt. Donald Abrams authorized the frisk of § 87(2)(b)

This allegation is being pleaded against Sgt. Abrams because he was the supervising officer at the scene of incident.

According to Kamins' *Search and Seizure Law*, a frisk constitutes a level 3 stop and is justified if an officer has "reasonable suspicion that a suspect has committed a crime and a reasonable suspicion that the suspect is armed and dangerous [encl. A]" Patrol guide procedure 212-11 [encl. K-L] provides further guidelines about frisk procedure stating that an officer may frisk an individual if the officer reasonably suspects that he or others are in "danger of physical injury." Procedure 212-11 lists several factors that contribute to the totality of reasonable suspicion including: 1) "the suspect's demeanor, 2) manner of the suspect, 3) time of day or night, and 4) proximity to scene or crime."

PO McCready stated that he frisked § 87(2)(b) because he saw a gray hooded sweatshirt laying on the back seat of his vehicle. A gray hooded sweatshirt was only one factor mentioned in the description of the suspect in the radio transmission. PO McCready also stated that he observed § 87(2)(b) making furtive movements prior to being stopped. Had § 87(2)(b) made such movements after being stopped, the officers' suspicion would have reasonably peaked and a frisk of § 87(2)(b) might have been justified. According to Sgt. Abrams, PO McCready and PO Stockton, § 87(2)(b) made no such movements after being stopped, however. Furthermore, § 87(2)(b)'s demeanor and behavior after being stopped did not suggest that he was a threat to the safety of Sgt. Abrams, PO McCready or PO Stockton. Sgt. Abrams described § 87(2)(b)'s demeanor as "calm" and neither of the officers stated that § 87(2)(b) acted aggressively or out of the ordinary after being stopped. Furthermore, according to Kamins, an officer can frisk the occupant of a vehicle if he fears for his safety [encl. H], but none of the three officers ever stated that they feared for their safety after § 87(2)(b) was stopped.

§ 87(2)(b) was not sweating or out-of-breath when Sgt. Abrams and the officers under his command stopped him. This should have been a further indication that § 87(2)(b) was not the suspect, who was described as running towards 223rd Street. If § 87(2)(b) had been running, he most likely would have been visibly distraught and flustered. Even further, the fact that no vehicle was ever mentioned during the 911 call should have been another indication that § 87(2)(b) was not the suspect.

Additionally, the dispatcher told Sgt. Abrams, PO McCready and PO Stockton twice that § 87(2)(b) was running towards 223rd Street and White Plains Road. Once PO McCready asked § 87(2)(b) for his driver's license, he should have realized that he was not the suspect named by the dispatcher. If there was any doubt about § 87(2)(b)'s identity Sgt. Abrams and the officers under his command, could have called the dispatcher back to obtain more information and confirm § 87(2)(b)'s identity. The officers could have also performed a warrant check using § 87(2)(b)'s driver's license to verify his identity, but they failed to do so.

§ 87(2)(b), § 87(2)(g)

Allegation D: Sgt. Donald Abrams authorized the search of § 87(2)(b)'s vehicle.

As with the frisk allegation, this allegation is being pleaded against Sgt. Abrams because he was the supervising officer on scene.

According to Kamins' *Search and Seizure Law* [encl. G], "once a driver is ordered out of a car, lawfully frisked and properly questioned, and once he has produced proper identification, the officer will have no justification in detaining the motorist any longer. Once the inquiry justified by the initial

circumstances has been exhausted and no evidence of criminal conduct has been discovered, the police must send a motorist on his way.”

§ 87(2)(b), § 87(2)(g)

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Allegation E: PO Michael McCready damaged § 87(2)(b) s property.

PO McCready admitted to lifting-up § 87(2)(b) s console, but stated that the console was already damaged due to the installation of after-market speakers. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: